THE MADRAS BAR

AND

TO IMPROVE IT.

I —1883

BY

A. C.

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मन्ये प्रयोग विज्ञानम् ॥

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RESS, MADRAS.

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PREFACE.

WE may look at a composite subject either *in the mass* or in relation to its component parts. The former course is the favourite of hostile critics who find a ready and convenient weapon in what is known as the fallacy of objections, affording as it does ample scope for condemning the whole by reason of certain of its parts being assailable. Adopting this procedure, a good deal of adverse comment has been put forth as against the Vakils, based on an inter-comparison of the several branches of the Madras Bar, and pronounced on the principle that the class of Vakils is to be judged by its worst specimens, and that of barristers or attorneys by its best.

Where, however, the aim is to form a just estimate and suggest improvements, the latter is the proper method to pursue. But then a composite whole may be like a chemical compound or a mechanical mixture. In the former case, it is quite plain that the task is hopeless for all practical purposes. In the latter case, there is not, between the several parts, an organic inter-dependence such as forbids an analysis into elements that are mutually exclusive, and this circumstance renders possible a just criticism, an intelligible suggestion of improvements, and a correction of the defective parts.

Differing from the prevalent practice, I propose to deal, in the following pages, not with *classes* but

with *systems*, and when I use the terms barristers vakils and attorneys in a manner seemingly suggestive of classes, I do so for the sake of brevity, still referring to typical individuals only. But it so happens that, in this instance, the individual himself—be he barrister, vakil or attorney—is a composite character. Letting alone the factors which are not capable of ascertainment at the entrance into the profession and which develop themselves, if at all, in the course of practice (such as the power to cross-examine, the tact and the presence of mind to effect a change of front or change of tactics as unanticipated contingencies arise) it is my opinion that the parts that enter into the composition of a practitioner are not merely several but are also *severable*, particularly in the case of all those that have received a liberal education and perhaps of those that are too brilliant to need much educational effort to bring out their mental powers.

I have drawn up these pages in this view, and, in submitting them to the University, the Bench, the Profession, the Government and the discriminating part of the Public, the feeling that prompted me is contained in the couplet of Kalidasa, printed by me on the title-page and which, rendered into English, will run thus :—

Till approved by the discerning
I deem no author's labors faultless.

.HE MADRAS BAR

AND

HOW TO IMPROVE IT.

In certain circles, the word Bar is restricted to ꞌan the body of men composed of Barristers-at-law ıd the Faculty of Advocates in Scotland. According this narrow acceptation of the term, the phrase, The Madras Bar", would apply to a very small action indeed of the persons devoted to the practice : Law in this country. A moment's reflection will, ıowever, show that this limitation of a generic term to a few of the species, comprehended under it, is perfectly unwarranted, and that the expression is legitimately applicable to the aggregate body of legal practitioners in our Presidency, including all denominations. The test I would apply is this:—has the person obtained the license of any judicial authority in our Presidency to represent suitors? If he has, he is manifestly a member of the Madras Bar—be he a barrister, a Vakil or an attorney,—be he empowered to practise in the High Court or in any Courts subordinate to it. Adopting this definition of the Madras Bar, I propose to consider, in the following pages, its present condition and the improvement it stands in urgent need of; and in doing this, I shall be steadily guided by two considerations, viz.

(1) The true dignity and utility of the Bar as a learned profession and (2) the genuine interests of the suitor

whose claims for consideraᴜᴜᴜn have bee
virtually set aside in favor of so-called vest
With this view I shall roughly divide the practitioners in our Presidency under two heads, the High Court Bar and the Mofussil Bar.

As regards the latter class, it is enough to s that our Legislature and our High Court Judg had, till recently, laid themselves open to mu adverse comment and that they have recently disarn ed all criticism—the former, by passing the Leg Practitioners Act of 1879,providing thereby a unifor system for the whole of the Presidency,—and th latter by framing, under the powers conferred b that Enactment, rules that have raised the standard of both general and special education, as is evidenced by the substitution of the F. A. Examination for the General Test and by the list of law-books, an intimate knowledge of which is demanded from the candidates for the Mofussil Bar.

In the light of a first and tentative step, the F. A is high enough as a test of general education, although, for fitting into the scheme set forth further on, the B. A. degree might well be prescribed as a proof of educational fitness in those that wish to practise before the District and the Subordinate Judge's Courts,unless it be that the numerical strength of graduates available in our Presidency has been thought too limited in supply to satisfy the demands of such Courts.

While this action of the High Court Judges in respect of the Mofussil shows an adequate sense of

/ity of the responsibility lying on them, it is .cer for deep regret that they have for a series ,ears done nothing that might testify to a like .olicitude for the efficiency of the High Court Bar.

The system that obtains now for the admission of Advocates, Vakils and Attorneys is substantially the same as the one that has obtained for over 15 years, and such changes, as the High Court introduced in regard to the enrolment of men of indigenous culture as Advocates, show, if anything, a disposition to let alone the parts of the system which most needed improvement, and to increase the difficulties in the way of candidates, already subjected to a much harder test than is undergone by English barristers as will appear later on. The system, at its formation, took cognizance, as all systems for such a purpose must rationally do, of fitness on the score of general proficiency, and superadded such plans of special education, as the then circumstances rendered necessary and possible.

(*a*.) As regards general education, whatever test was held in England as sufficient proof of that, was impliedly approved of by the High Court respecting English Advocates and English Attorneys, and for the Attorneys, to be made in this country, they accepted, as an adequate preparation in this respect, the passing of the University Matriculation, which, under the schemes of special education then devised by our University for the medical legal and engineering lines, was considered satisfac-

tory for the time being, and which alone t. condition of education rendered possible.

So far as the English Advocates and Engl. Attorneys were concerned, we had the benefit of the improvements, such as they are, that were wrought in England from time to time, and the fact, that the B. L. diploma was laid down as a condition of admission as regards Vakils, has likewise led to the High Court profiting by our University successively introducing the F. A. and the B. A. Examinations as tests of general proficiency required of those who go in for its professional degrees. Among those that qualified and are qualifying for admission to the High Court Bar, the only class, that remained and remains untouched and unaffected by the spirit of progressive change, is the Attorneys that are made in Madras.

Few will gainsay that this is a most unsatisfactory state of things, and, viewed by the side of the enlightened reform that the Judges of the High Court introduced recently in respect of the Mofussil Bar, the matriculate-attorney is a glaring anomaly, an anomaly the continuance of which will, not only stultify them as Fellows of, and the prominent leaders in, our University, but will also imply that, having no faith in the schemes of education, which as Members of our University they helped in elaborating, they contrived another scheme that might be a standing argument against the efficacy of University culture.

(b.) As regards special education, too, an analogous course was taken by our High Court. The schemes for

this sort of education in vogue in England were impliedly accepted as regards English Advocates and English attorneys, and the degree of legal knowledge that our University called for from aspirants to the B. L. diploma was likewise adopted respecting Vakils. Under such an ordering, the High Court derived all the advantages that accrued to these bodies by the successive changes that were introduced by authorities in England and by our University. As regards the attorneys to be made at Madras, the scheme devised was singularly inappropriate. But then it was the necessary outcome of the peculiar circumstances that then existed. The Supreme Court had just before become extinct, and, in the absence of any legislative or authoritative provision on the subject, the absurdly pleonastic specimens of Bills, Replications, and Rejoinders, prepared under the Supreme Court regime in imitation of what has justly been described "precedents of pleading which were a disgrace to common sense" could alone be the models for the learner, and their verbose authors could alone be the teachers. Add to this, that "studying in chambers" is a fashionable phrase, imported from enlightened England and conveying an imposing idea of erudition, although in no degree corresponding to actual reality, and we at once realize to ourselves the reason why the scheme turned out to be what it was. That the scheme came to degenerate into a system for inculcating diffuseness and repetition in drawing up pleadings and conveyances, and that the legal knowledge, attainable under the circumstances, was reduced to the minimum quantity possible, is what every-body knows. The

examination-papers plainly attest this, and the half-articulated opinions of examiners,—not to speak of the attainments of some of the examiners themselves—only tend to emphasize its unqualified faultiness.

It is thus clear that, except that the Vakils, the English advocates and the English Attorneys were, in certain respects and to a certain extent, beneficially affected by the action of our University, the Inns of Court and the Solicitor-making authorities in England, the High Court Bar has received practically no attention whatever ever since 1865, and that, for this reason, if for no other, it stands in need of being rigidly looked into. Whatever may have been the case in the past, it strikes me that, by raising the standard of general and special education as regards the Mofussil Bar much higher than the standard prescribed for Attorneys to be made at Madras, the High Court Judges have, in a manner, pledged themselves to effect improvements in their own Court. As I maintain that, unless the an improvement took the shape of a better adaptation of the means to the end than now, it would hardly deserve the name, I shall proceed to state what, in my humble judgment, are the changes that seem desirable. This view of the matter, naturally and unavoidably forces on us a preliminary or subsidiary enquiry, viz., wherein lies the special fitness of a legal practitioner, regard being had to the requirements of the great bulk of the suitors in this Presidency, and in what degrees do the Advocates, Vakils and

Any one, who has watched the successive stages in the progress of a law-suit, will have no difficulty in seeing that such fitness roughly falls under the following heads;—

(*a*) Linguistic.
(*b*) Intelletual.
(*c*) Lingual.
(*d*) Legal.
(*e*) Moral.

I shall deal with each of these elements, first showing how it involves a duty, and then considering how far each of the classes is competent to perform that duty.

(*a*.) The first thing a suitor does is to explain to the legal practitioner the details of the injury he has sustained. He would state the facts in his favor and those against him, and he would submit for his would-be-adviser's consideration the documents and the nature of the evidence whereon his case rested. To be able thoroughly to understand these, and to pronounce fairly on them with a view to advise the adoption of, or abstention from, proceedings is the initial duty of a legal practitioner, and this supposes, for its adequate discharge, a facility to converse with the suitor and comprehend and construe his documents. The most satisfactory mode of performing this task is obviously by mastering the Vernaculars of the people who compose the bulk of suitors. It must be patent to every body that, in this respect the non-Hindu Barristers and Attorneys and a few of the Vakils are, except a few instances, eminently

deficient. The second best method of fulfilling this duty is by the employment of interpreters, or by securing translations of the documents and depositions pertinent to the case.

As regards the interpreters in the employ of the attorneys and the barristers, the less said the better. Few—I had almost said none—that have received any decent education have accepted office under a lawyer, and, if suitors were polled on the subject, there is not the slightest doubt that there would be a perfect unanimity in condemning the lot to be absolutely worthless, viewed in the light of media of communication between them and the lawyers. A good many of them are merely paid-touts in disguise, and such as do not fall under this category add to the ignorance, which they possess in common with the rest, the further merit of levying a heavy black-mail on the suitors, that might unluckily resort to their masters. Ignorance and depravity are the characteristics whereby they are known to the public at large, and rapacity and heartlessness are the amiable traits of character which they exhibit for the special benefit of their masters' clients. There is, however, a small propotion, able to place at the disposal of their masters and their clients little more than mere muscular power.

That men such as these should find favour with the members of a *learned profession* is by no means complimentary to the good sense of their employers, and in any other country than India this absurdity

would have long ago met with rough handling and a speedy remedy. But this is by the way.

If such are the Interpreters, need it be stated that translations by these worthy men are contemptible and grievously misleading? The manner in which this mischievoes result is, *in part*, obviated at present is by getting all the papers (irrelevant as well as relevant ones) translated by the Court interpreters.

Apart from the fact that these intepreters are overworked, even without this addition to their legitimate duties,—a fact which is perhaps beside the point on hand—it is worthy of remark that it is perpetrating a public wrong to make officers, paid to aid the Court, to perform a task that Lawyers must do, either in person or by means of assistants well-educated. The need that exists, in an administrative point of view, for indenting on England for some of our Judges, gives rise to the corresponding need for interpreters to convey to them the suitors' facts. It is hard to maintain that a system, ordained to meet the requirements of an exceptional policy, should be made to do duty for the personal advantage of individuals, who should not consent to an expenditure of energy and money, commensurate to their love of gain.

If the Attorneys and Barristers only practised in the Mofussil, they would find that *there* the Court officers rendered into English only such documents as had been, after a consideration of them by the Court, ordered to be translated. As the establishment with which Mofussil Judges work is limited, as

those Judges are not totally unacquainted with th Vernaculars, and as they have a real control over their staff of officials, by no means too many, such an order is seldom given as to irrelevant documents and others, on the construction of which there cannot be two opinions or which have only a secondary value in the case. Certainly, no document is put into English through the Court, *in anticipation* of its being used—an anticipation that is too often unfulfilled. If the Honorable Judges of the High Court should become practically alive to the wisdom of this course, they would at once see, how apposite and just are my remarks regarding the class of men, who are the help-mates of Attorneys and Barristers in their dealings with native suitors, and how the system of working through Attorneys and Barristers, stripped of this adventitious advantage, is calculated, either to lead to a perfunctory discharge of the duty assumed by them, or to entail on the party, whose interests are at stake, costs that would press on him far more heavily than at present. Here, if we remember that the linguistic attainments, insisted on in this connection, are not a mere imperfect and slip-shod conversational smattering that some East Indians and many Hindus possess, it seems inevitably to follow that the Barristers and Attorneys—the pretentious part of them in particular—turn out to be not simply less fit, but, in truth, unfit. This sort of disqualification is indeed found even in some Vakils, but, if the truth is to be told, I must notice that, in their case, the evil is almost remedied by the fact that the clients, in several instances, happen to know the Vakil's mother tongue.

(*b*) The *intellectual* is the second element of fitness that demands our attention. By this term I mean the power, in the first place, to comprehend as a whole the isolated facts of a case,—the skill, in the second place, to separate the chaff from the grain,—and the training, in the third place, to calculate probabilities aright and to arrive, by fair induction or careful reasoning, at logical and exact inferences, not only as to the probative force of the evidence that one's own client proposes to adduce, but also as to what the residuum might be that would remain after hostile criticism and adverse proof. While, on the one hand, I concede that natural ability and a good experience go a great way to make up this sort of fitness, I maintain, on the other hand, that by themselves they do not answer. The thing needed to supplement natural ability is a liberal education, special stress being laid on what an American Reviewer has aptly called *disciplinary studies*—an expression evidently suggestive of the exact sciences, Mathematics and Logic occupying the foremost place. If anything ensures this culture, it is plainly academical education, as would strike any one, who might condescend to glance over any University curriculum. Indeed this is not *necessarily* a proof; neither is any human test, including even a call to the Bar by one of the Inns of Court, an effectual antecedent guarantee. Putting out of mind such subtle speculations, we may, for all practical purposes, assume that, generally speaking, the possession of a University diploma is presumptive proof of a cultured intellect. Judged by this test, I must say that, barring a few instances of men who are proof against

all intellectual training, the Advocates, the Vakils and a few of the English Attorneys are, in a fair way, up to the mark, and it is important to note that, whereas an assertion of this sort is possible as regards most of these classes, such a thing cannot be, with any safety, predicated of the Attorneys as a body, if we regard that body as it is constituted at present, and much less if we take into account, all those that are now in a chrysalis state. I think that, in not including all the English Attorneys in the class of the intellectually fit, I am doing no injustice as I am fully borne out by the verdicts, extracted in another place, of writers who have had opportunities of forming a correct opinion on the matter. Add to this that, with but two exceptions, Matriculates alone have aspired to the Attorney's calling at Madras, and it is quite plain that the chances are absolutely against the diciplinary studies *ever* commending themselves to persons that qualify here for this branch of the Profession.

(*c*) Lingual fitness is the third in the list of ingredients I noted above, and it is resolvable into two elements, viz. (1) An acquaintance with the phraseology in which it is customary to clothe pleadings, and (2) A command of the language in which the Judges are addressed.

(1) As regards the first, it goes without saying that every subject and every profession has, very properly, its own nomenclature, and that an adoption of it promotes perspicuity, imparts precision and obviates a good deal of circumlocution. Admitting, as I do, the claims of this description of knowledge, I must emphatically protest against the in-

.usion, under this head, of such tautological phrases as " for and in respect of," " of and incident to," " bargained and sold" and a hundred others of the kind, which are seen in unmeasured abundance in almost every specimen of pleading, passing current in the High Court, and a readiness in the use of which is falsely regarded as a merit much to be desired. If such redundancies are superfluous in oral statements, they are all the more so in writing. This faulty practice of indulging in verbiage and in expletives follows from a habit of slavish mimicry or the inability to distinguish between the words grouped together, and the impression one receives daily from the literary performances of the authors of these masterpieces of prolixity forbids all notion of each word having been duly weighed and advisedly employed. To say further that such excesses of wordiness are resorted to with a view to increase folios and thereby swell costs, is to call attention to an exceptional cause that operates in a few cases, by no means inconsiderable in number. One thing is, in the meantime, clear that there is an intelligible limit separating *use* from *abuse* in this matter, and the question is how far the Vakils and attorneys,—the classes engaged in drawing up pleadings—come up to, or transgress this limit. I cannot help saying that, as regards the practice on the Original Side, many of the Vakils have not striven to reach this limit, and that almost every attorney oversteps it to an outrageous degree—a result that proceeds, in the former case, from a thoughtless contempt of an indispensable item of knowledge, and from the apprenticeship (imposed by the rules) being served

with Advocates and Vakils, who do little or n original work, and in the latter case, from the circumstance that the fatal facility of piling words upon words has been acquired in a purely empirical sort of way, unaccompanied by a due perception or a well-regulated effort to secure a proportion between the words used and the ideas meant to be conveyed. I append two specimens of plaints drawn up by recently-added members of the body of Attorneys, and the contrast that the conciseness of the one presents to the shocking verboseness of the other would seem to exemplify how liable one is hopelessly to succumb to a vicious training on the one hand, and how, on the other hand, clear-headedness and sterling sense can assert themselves in spite of a situation, unfavorable to their exercise.

(*b*) As regards the second part of lingual fitness, viz., a command of the language in which the judges have to be addressed, it must be premised that English is such a language in this instance. If the study of a few of the British classics could not be barren of results, a presumption of competency would seem to be raised in respect of every graduate-practitioner, be he Barrister, Vakil or Attorney, and in every other case the question can only be decided *a posteriori*. A knowledge—even a critical knowledge—of copious vocabulary does not however imply possession of a facility or an impressiveness of speech—a qualification that is eminently necessary in the legal profession. Putting out of mind lucidity of exposition, which is more essentially an intellectual than a lingual performance, I feel

bound to state that a large majority of the men, now in the Bar, betray their inability to speak fluently, if not eloquently. Much of this kind of facility depends, no doubt, on nerve and temperament, but a good deal of it comes from the habit, early formed and steadily persevered in, of reading aloud and with appropriate intonation models of narrative and impassioned styles of composition,—a course of training that does not seem to have, at the proper time, commanded the attention of a good many now at the Bar.

Springing from like causes, preventable by like discipline, this defect is also capable of being in a great measure remedied by like means. While the Barristers as a body strive to adopt these means, the Vakils as a body seem to be indifferent to it. Whereas several of the former class fully appreciate the value of industry and bestow on their work all the attention that it is in their power to bestow, thereby minimising the consequences of this defect, many of the latter class neglect this necessary precaution, and the result is that, on an unforeseen contingency arising, their confidence and self-possession forsake them, and an air of diffidence, of hesitation and of confusion pervades their utterances, giving to the observer the impression that they are comparatively unfit for their profession—the truth being, however, that they are quite as fit as others that pass muster, but that they have not practically recognised what many eloquent men have recorded as their personal experience that a thorough mastery of their subject, in all its bearings and in all its possible aspects, was the true secret of good

speaking and that till they made this discovery and acted upon it, even *they* met with signal failure in their efforts at eloquence.

I cannot quit this part of the subject without adding that if the Vakils do not take a lesson in this respect from their blundering and from the success that mediocre men have secured by attention to this desideratum, their sins will be visited, not only on their own heads, but also on the heads of their children and their childrens' children as, by such seeming incompetence they will discredit their branch of the profession and become the unintentional instruments in closing up to indigenous talent the only path that now leads to a life of honorable competency, outside the wizard-ring of Government Service.

Legal fitness is the next point to discuss, and this again is divisible under 2 heads, viz.

(1) A knowledge of the rules of practice.

(2) A knowledge of the legal principles, statutes, tenures and social usages of the land.

(*a*) As regards the first, I am sorry to say again of many Vakils that they are singularly inattentive to it and are only awakened to its importance by the strictures of explosive Judges and the derision of captious Attorneys, who and others belonging to that class are, generally speaking, decidedly superior to many of the Vakils in this respect, although in this respect alone. This deficiency is traceable to causes precisely the same as is their want of expertness in drawing pleadings in the recognised form, and it is devoutly to be wished that, inasmuch as both teachers and learners seem of one mind to multiply

instances of this drawback, such a change will be wrought in the rules relating to apprenticeship as may effectually hinder the incompetent master and the misguided pupil from being led astray by a too evident propensity to let into the profession such as detract from the dignity and utility, that legitimately belong to it. It may be said, by way of palliation, that the so-called rules of practice are mainly traditional, and that numbers of them can only be learnt from practice in English Courts or books treating of it or gathered from concrete experience. Be it so, and let it be lamented ever so much. But beyond vain regrets and unavailing listlessness, there is much to do if you cared for your reputation and prospects. You ought to redouble your energies and overcome the difficulty—not stand before it with your arms folded on the breast, drawing upon yourself, all the while, the finger of unmitigated scorn, and affording to those that are jealous of you a handle for misrepresentation and undiscriminating censure. To perceive the difficulty and yet not to exert yourself in acquiring this special competency is, I am inclined to think, an aggravation rather than an extenuating circumstance.

(*b*) The second element of legal fitness consists, among others, in a knowledge of the Hindu and the Mahomedan Laws, the material part of the Indian Statute Law and the land-systems, tenures and the binding usages of this country.

As regards Barristers-at-Law, one would expect that, inasmuch as a call to the Bar gives a passport for admission to Indian practice, the knowledge

in question would be laid down as a condition precedent—an expectation that is sadly disappointed when we find, at a glance, that the subjects prescribed are :—

(1) Roman Law.

(2) Law of Real and Personal Property.

(3) Common Law.

(4) Equity.

In this list, one looks in vain for departments of law that have a special bearing on the conditions of this country, and the feeling of disappointment, created by such an inspection, gains considerable strength when we note (1) that as to Roman law it has been said that "the slight knowledge of the subject requisite to pass will have no direct value to the student in his after career, and indeed will probably be forgotten"; (2) that Broom's Commentaries, which has been superseded for some years by our University as insufficient for the B.L. degree, is pronounced more than enough to secure a pass in Common Law; (3) that Smith's Manual of Equity is declared well-suited for pass examinations, Snell's treatise on the subject being regarded virtually as a luxury; (4) that on the Law of Evidence very few and elementary questions are put, if, at all; (5) that Criminal Law is very slightly touched upon; and (6) that some that repeatedly failed in, and others that despaired of being ever equal to, the Indian tests as to general proficiency and special education, succeeded in getting called to the Bar.

Add to this that the principles of real and personal property, which the would-be-barrister has to

acquire, relate to systems and tenures having little in common with the systems and tenures in this country, that the propensity to import the terms of the peculiar English tenures into the consideration of Indian land-questions has led to mistakes and confusion—repeatedly deplored by Judges not imbued with an unquestioning faith in the universal applicability of western notions and western terms,—that certain artificial rules relating to constructions of wills have been so applied to Hindu wills as to defeat the plain intention of testators, that certain of the principles of the English Courts of Equity relating to mortgages notably illustrate, in their application to India, divergences from recognised views prevailing in this country almost as the law of land. It seems then inevitably to follow that the Barrister's legal learning—far from meeting the requirements of the Indian suitor—is insufficient in its range and scope, unsuitable in its character and, in some instances, hurtful in its results.

As regards English Attorneys the following opinions would seem to prepare the way for their worth being rated at its true value.

(*a*) The examinations which it (Incorporated Law Society) now holds have done something to keep gross ignorance out of the profession.

(*b*) That the standard of the preliminary or entrance examination remains so low, that there is no guarantee that a man when admitted to the Roll of Solicitors possesses even the rudiments of a good education.

(*c*) The Law Examinations of the Incorporated

Law Society, have indeed an appearance of being severe, but it is an appearance only, as every University-man who has passed them will not have failed to perceive.

(*d*) In these days every body has a son, a brother or a cousin who is or is about to be a Solicitor, and there is really no obstacle put in the path of unfit candidates for that which is a most responsible and which should be a learned profession.

(*e*) It cannot be denied that the work of a Solicitor is much more onerous and requires far greater skill than, for instance, of an Inspector of Schools. Yet while a man would have a poor chance of being made an Inspector of Schools unless he has obtained a first class in honors at the University, he can rise from the position of a mere copying clerk or from a Law Stationer's Shop to the Roll of Solicitors, with wonderful little difficulty.

(*f*) The qualification for entrance to the profession is far too low.

(*g*) The only possible justification for such a law (*i. e.*, the one that makes an Attorney liable for giving bad advice and saves the Barristers —even the freshest—from such a consequence) is the existence of a large number of Solicitors of whose qualifications nothing is known.

The objections taken in these passages to the English Attorneys apply with tenfold force to those that are the products of the Madras system. To the

..sons already given let me add (1) that attend-.nce at the Presidency College law-lectures, such as they are, is not even rendered compulsory (2) that there are not, in Madras, other public lecturers and private tutors in law (3) that no text books, are prescribed (4) that, so far as I have been able to learn, the Attorneys that have taken articled Clerks do not spend any time in teaching them and (5) that the articled Clerks are left to their sweet pleasure as to what books they would study and what manner of preparation, as to special education, they would impose on themselves.

When we remember that the High Court Attorneys are entitled to *all* the privileges that Advocates and Vakils possess, with the single exception of addressing the Court on the Original Side—privileges far in excess of those that Solicitors enjoy in England—the necessity for acquiring a decent knowledge of law becomes paramount. I cannot conceive the reason why they should escape an ordeal, equal, in range and character, to the B. L. Examinatio.

I am not so credulous as to believe that, in the busy chambers of an Attorney's Office and from the incessant efforts to smother sense in a vast multitude of words, any inspiration comes for the benefit of the student in law. I have never heard that the theory of any science was capable of being learnt by mere apprenticeship. To reduce theory to practice or rather to see *in what form a theory has been reduced to practice* and to learn the mechanical part of this task, an apprenticeship is necessary, and such, as speak of the possibility of evolving an accurate

knowledge of theory from a *mere* concrete expe. ence, grossly exaggerate the benefits of practice. The knowledge, thus acquired, must in strict language be called empirical, but it is too often loosely spoken of as practical knowledge, presumably in contradistinction to theoretical knowledge. W' " the nature of empirical knowledge *excludes* the retical knowledge and is necessarily imperfect, hazy and unsystematic, the conception of practical knowledge necessarily postulates theoretical knowledge *and* superadds to it a knowledge of the methods and forms of turning it to use. While the possessor of mere experience-begotten knowledge which must, in the nature of things, be inexact, uncertain and unsystematic as already said, is truly characterised a quack or an adventurer in other departments of business, it is the singular good fortune of the legal profession that *its* empirics escape the opprobrious epithet.

The conclusion then is that the legal learning of the English Attorneys, is, in a vastly greater degree than in the case of Barristers, insufficient in its range and scope, unsuitable in its character and hurtful in its results. As regards those that have become Attorneys under the Madras system, all that need be said has already been said, and it is enough to add that, theirs is, generally speaking, an *a fortiori* case of unsuitability.

As regards the Vakils, the amount of legal learning, they are called upon to acquire, is easily ascertained by a survey of the B. L. text books which are :—

Law of Evidence.........	(As prevailing in India.)
ne Law of Contracts	
The Law of Torts	(Collett.)
Equity Jurisprudence...........	(Story and Snell.)
Hindu Law	(Sir Thomas Strange.)
Muhammadan Law..............	(McNaughten.)
Criminal Law	(The Codes of Civil and Criminal Procedure.)
General Jurisprudence	(Lindley's Introduction Pt. I., excepting Chapters 4, 5 & 6; Pt. II., Chapters 1 and 2, and the 1st Division of Chapter 3, with the corresponding notes of the translator in the Appendix.)

Separate papers are set in almost all the subjects.

The examination-papers are as stiff and searching as they can well be, and when we recollect that, such as are candidates are so, to make the degree a means of earning an honorable livehihood, and *not* to secure merely the status that success in it confers, as is the case with many of those that aim at a call to the Bar, it is plain that the student must be taken to have exerted himself to the utmost. That, in the conduct of the examination, eminent judges and the leading barristers have till now had a good share, further strengthens the conclusion that one that passes it successfully must needs possess a respectable degree of legal knowledge. The Vakil has a further advantage, as regards Hindu Law, over the other classes of practitioners, and it is this :—If he has a knowledge of Sanscrit, he is able to obtain his notions of that law from the fountain-head, and, if he is unacquainted with that language, he is still able to hold a controversy with the Pundits

who speak his mother-tongue and learn the imp and bearings of Sancrit Texts, as nearly and a effectually as if he could read them in the original. Regarding the Indian statute-law and the Indian land-tenures and usages, there is room for the complaint that the University does not go far enough. For all this, I feel bound to affirm that, at starting, the Vakils are, in the first place, better equipped than the Barristers and Attorneys in respect of laws of special applicability to Indian cases, and, in the next place, they have the inestimable advantage of easily commanding all the wonderfully—vast knowledge that Sanscrit Pundits succeed in amassing.

Next in order for consideration is moral fitness, under which head there is little to be said, seriously uncomplimentary to any of the classes that compose the Madras Bar. It will be allowed on all hands that barristers, vakils and attorneys are alike above the grave offence of selling their clients' instructions, and they are equally free from the fault of subordinating their clients' interests to solicitations of friendship or to overbearing authority. Notwithstanding an occasional tussle with the judges and the opposite advocates, there is a perfect good understanding between the members of the profession, among themselves on the one hand and the judges on the other, a genial spirit of give-and-take characterises their relations, irrespective of race or creed, and no one has been mean enough or has been daring enough to cast imputations on any of them. There is however a conduct, which is attributed to some practitioners and which, if true, is highly reprehensible, detracting as it does from the dignified character that one has a

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ght to expect from the members of a learned profession. I refer to the practice, that is said to be growing largely of late, of practitioners securing clients on a promise of doing their work for a definite sum, but proceeding to increase their income by expanding the bills of costs (in case they succeeded), as if no such arrangement had existed. Such a course is akin to unwholesome speculation, and bears an unmistakable family-likeness to Champerty and Maintenance, which are prescribed by Law. It is no doubt possible for a sharp person to keep clear of legal pains and penalties, but I must insist that a member of a learned profession should aim at something higher than a mere *safe* course and should avoid, not simply a well-grounded suspicion but even the appearance of a suspicion. He must be able to show, in his account-books, such advances from time to time as are warranted by the magnitude or the exigencies of the work and by the means of the suitor. If a disproportionately small advance is accepted from one that can well afford to make a more substantial initial contribution, and if further advances pour in after the suit is either decided favourably, or wears the aspect of being so decided, it is pretty clear evidence of conduct, not altogether above-board, unless it is manifest that undoubted friendship or respectability of the client precludes the supposition of a gambling spirit. It is indeed insufficient to secure an adverse verdict in a Court of Law, but it is ample-enough testimony *in foro conscientiae.*

Allied to this, and hardly differing from this in blameworthiness, is the proneness of some attorneys

to make up for the counsel an enormous bundle, good part of the component parts of which has no more relation to the rest than that the same tape has tied them all up. The most casual examination of this huge mass of papers, now going under the terribly misapplied name of a Brief, reveals a deal of matter that scruples of conscience and an unalloyed attention to the clients' interests—not to the Attorneys' interests—would keep out of it. On receipt of a brief, thus prepared, counsel are known first to be engaged in the highly edifying task of separating the material papers from the padding or from parts having a very remote bearing on the case, although it would be perhaps in consonance with justice to themselves and to the suitors who find the funds wherewith they are paid, if they would administer to their tormentors a gentle rebuke and put a blackmark on papers that had been gratuitously foisted into the thing. This huge pile of papers is, ungrudgingly and with seeming approval, accepted by counsel, taken about, and in due time returned. It is again produced before the taxing officer, who must indeed find his own energies taxed to the uttermost in trying to discern what is essential in this vast and varied miscellany. In many affairs of life "use lessens marvel" and very soon these briefs come to be accepted as of normal sort, notwithstanding their phenominal size, even as (perhaps just because) they have been acceptable in "counsel's opinion." These are serious faults, if they are not acts of turpitude. They betray a low degree of that self-respect which is the main source of a due sense of dignity and rectitude of behaviour, which latter are hard to acquire and

order to keep up. Among the causes that tend to undermine it are the demoralising effect of having to wait for work that does not come and the unhealthy desire to become rich too soon, while that which forms an effectual counter-check is the possession of something to lose or the existence of something to fear. To have achieved University-honors—to be well-born —to mix with men, whom the world esteems and an association with whom is something like a patent— these constitute an ascending scale of effecient causes that operate to preserve one from degenerating, while the wholesome fear of having to face, in society and amid common friends whose opinion one cares about, the victims of one's cupidity or depravity has a vast power to keep down the growth of inordinate selfishness and unprincipled conduct— unprincipled, not in the positive sense of being swayed and led by *bad* principles, but in the privative sense of not having firm and definite principles to adhere to. It would be invidious to make a classification from this point of view, and every one who is at all acquainted with the members of our Bar will have no difficulty in spotting the delinquents. In the meanwhile one thing is clear viz:—that so far as the prospect of being taken to task, among common friends, for his misdeeds and short-comings is concerned, *that* deterring force is of the very highest potency with the Vakil, and can have no place whatever as regards the English barrister and the English attorney as well as those that take them for paterns and cite them by way of justification. The complaint then is, not that they disobey any dictates of law r ethics, but that they sin against man's

emotional nature and against what is rightly regarded as enlightened behaviour.

In discussions among or with the members of the legal profession, these *escapades*, if specifically referred to, are stigmatised as *uuprofessional*—a word that has a trade-union ring about it and suggests rather an offence against a close body than a wrong to suitors at large. That it is so, will be further clear when we note that the self-same odious ephithet is attached by the profession to the Vakils who take *less* than the regulation fees, although under the law governing the matter, such a course is perfectly legal and although such an objection is never dreamt of as against charging *higher* than the regulation-fee—a conduct which now-a-days, besides escaping adverse criticism, draws to it considerable praise. Looked at otherwise than in the trade-union point of view, what the regulations lay down must be the rule, and a departure from it, *either way*, must be equally objectionable if at all—an idea that never strikes those that take exception to small fees. It is hardly necessary for me to add that these remarks are made—not as a plea for such as take small fees—but as throwing light on the usually-accepted import of a word, professional people very generally employ.

Here ends my answer to the question raised at page 7, viz., "Wherein lies the special fitness of a legal practitioner, regard being had to the requirements of the great bulk of the suitors in this Presidency and in what degrees do the Advocates, Vakils and Attorneys possess this fitness," and, before

ceeding to set forth the scheme of reform, that in my view, seems desirable, I shall throw my foregoing conclusions in a tabular form, so as to exhibit the results at a glance.

FITNESS.		In whom present.	In whom absent.
1. Educational	(a) General.	B. V & some A.	Most A.
	(b) Special.	V.	B & A.
2. Linguistic ...	... ...	V.	B & A.
3. Intellectual ...	... ...	B. V & some A.	Most A.
4. Lingual	(a) Language of pleading.	A.	V.
	(b) Language of address.	B. V & some A.	Most A.
5. Legal	(a) Rules of practice.	A.	V.
	(b) Indian and general laws.	V.	B & A.
5. Moral ...	... ...	B. V & A.*	

Except where ignorance, perversity or cupidity leads estray.

Now as to the reform proposed.

First as regards general education. Nothing short of a University degree should suffice as a rule, considering that *we are dealing with the Bar of the Highest Court in the Presidency*, and remembering that there is here, as everywhere else, a natural tendency for a good deal of talent to locate itself and work in an intellectual atmosphere. Add to this that many a man who has received the highest culture that the Indian educational system is capable of imparting, has been driven into the capital town by the daily-developing unjudicial high-handedness of many of the judicial magnates in the mofussil, who forget that

* NOTE.—In this table, B, V and A stand for the Barristers, Vakils and Attorneys respectively.

......................It is excellent
To have a giants' strength; but it is tyrannous
To use it like a giant.

and it must be clear that the complaint should rather be on the score of super-abundance than of deficiency. It seems therefore to follow that, the numerical strength of University-men in the Presidency perfectly justifies that the B.A. degree should be prescribed as a test in this respect. The F.A. has been prescribed for the District Court pleader, although as a fact, in almost every first grade District Court, there are numbers of graduates. It seems to me that this fact makes it a necessary logical sequence that a higher degree of general proficiency must be insisted on, where a higher status and larger privileges are conferred, and let me repeat that I can conceive of no excuse for being contented with less in the face of a plentiful supply of a higher type.

With the Vakil, the standard I suggest is the one now held in request, and there is little room to fear that it will ever be departed from. The fact that many University-men have betaken themselves to the Bar in England bids fair for the standard of general education being, as regards barristers, similar to the Indian test. As regards this class, therefore, it is hardly necessary to make a provision to meet exceptional cases. Considering how the tide has been steadily flowing within these few years, such exceptions will only be of men, who have long been in practice, and their experience, even if it consisted in mere observation and not actual performance, would furnish a guarantee hardly less satisfactory than a University degree.

As regards attorneys, the rule stands in need . strict enforcement. Among the English attorneys practising in Madras, University-men form a very small percentage, and, without at all saying one word in disparagement of the others, I do think that the introduction of the rule as stated above will and must tend to raise them to the level of their privileges. It must however be said to their credit that, they have the good sense systematically to keep themselves aloof from the Appellate Side, where they must meet with cases perfectly unfamilar to them, and from the Mofussil where they are entitled to lead and take precedence of the local pleaders of whom a good many are superior to them in many respects. This prudent conduct no doubt minimises the evil, and renders enormous privileges perfectly innocuous in their hands. But what guarantee is there that their example will be followed by others that come after them? Many of the junior attorneys, particularly the recent additions, have found it too difficult to resist the temptation to rush where their betters feared to tread, and it is a bad policy to give privileges and expect the possessor to be always wise in their exercise. Dr. Primrose's hope that his children should not spend the guineas that they had received as pocket-money may well be taken as a satire on mistaken expectations, and whether the Vicar's sons and daughters had counterparts in life or not, it is quite clear that a similar injunction is sure to prove abortive in regard to whiskered children.

As to special education. Almost every ground that has been urged for the introduction of the B. A.

degree as a test of general education, would seem necessitate a rule that the B.L. Examination, somewhat enlarged as to the Indian statute law, Indian land-tenures and usages, must be laid down as a test in this respect. This standard is at present prescribed for the Vakil, and there is little fear that it will ever be lowered. As regards the indigenous attorneys, the examination they undergo has already been characterised, and it only remains to be noticed that, when special candidates secure special examiners, there is ample room for the unconscious interference of friendship or for the insensible operation of a fear that the master, with whom the pupil has learnt, may take the latter's failure as an indirect insult put on him, and that such a system is liable to lead to certain bad effects which are stated in a masterly manner by one of the foremost thinkers of this century as follows :—" When the question, in the mind of an examiner, lies between blighting the prospects of an individual and neglecting a duty to the public who, in the particular instance, seldom appear of first-rate importance ; and when he is sure to be bitterly reproached for doing the first, while in general no one will either know or care whether he has done the latter ; the balance, unless he is a man of very unusual stamp, inclines to the side of good nature. A relaxation in one instance establishes a claim to it in others, which every repetition of the indulgence makes it more difficult to resist ; each of these in succession becomes a precedent for more, until the standard of proficiency sinks gradually to something almost contemptible."

This change in the Madras system, as regards

torneys, cannot be introduced too early. The usual reasons for postponement of such a large measure of reform, are that the suitors might suffer and the court-work would be impeded by a want of a supply, adequate to the demand. These reasons have absolutely no place in the present notoriously overstocked condition of the Bar here. Nor is the change objectionable on the ground that it will be a very great leap—an advance with a gigantic stride—as I cannot see that Noodledom has any rights, and as few will deny that the profession exists for the benefit of the suitor—not the suitor for the benefit of the profession. In the life of an individual, such a substitution is an injustice, and what is true in the case of an individual is not true as regards successive batches of aspirants, especially when there is no room to apprehend that the supply may not be equal to the demand, and when the change pointed out would be quite appropriate, if there had not been a neglect in the past. Let every one, who has the interests of the suitor at heart, honestly interrogate himself if the existing system does not show that the profession, which ought to be the complement of education, has been in a marked manner converted, in many instances, into a safety-valve for the incorrigible unhopefuls in schools. There is sound objection indeed to force into the school over again, such as have for sometime bidden farewell to it. The peculiar habits of application that distinguish students in schools are soon lost, if they have been relaxed for even one year, and this consideration must operate effectually to exclude the B. A. degree as regards the *present* articled clerks. But no

such excuse exists as regards *special* education. *Ex hypothesi* the articled clerks are *students in law*, and *ex concesso* they *aim at* privileges attainable by others, only through the B. L. degree. Why then should there be any misplaced lenity? I urge most strongly therefore (1) that the B. A. degree should be at once laid down as a condition precedent to becoming articled-clerks (2) that the B. L. degree should be insisted on as the test of special education (3) that the system of appointing special examiners for special candidates should be at once abolished (4) that the theory of regarding lengthened apprenticeship as calculated to impart legal learning should be discarded (5) that after introducing the B. A. and the B. L. degrees as antecedent qualifications, the period of apprenticeship should be cut down to one year, the sufficiency of which is pointed out in another place and (6) that, in respect of those that are now articled clerks, they must be compelled to answer the papers for the B. L. Examination in the year in which they apply to be examined,—a course that is easily within the reach of the High Court Judges who are also leading members of the University-senate. Any objection to this course, on the part of the articled clerks themselves, is, to my mind, a confession of incompetence and an overwhelming proof of the extremely defective, if not also deceptive, character of the present system.

As regards English barristers and English attorneys, what I am most anxious about is that the authorities here and the Inns of Court should fully and earnestly realise to themselves the existing unsuitability of their legal learning for Indian require-

ents. Such a recognition must, unless I am sadly mistaken, be followed either by the formation of a scheme supplimentary to the present systems of calling to the Bar and of enrolling solicitors, or by the introduction of methods which might, antecedently to such call and enrolment, ensure a respectable knowledge of the Hindu and the Mahomedan Laws, the Indian Statute-law and usages, so far as it can be derived from books. Whichever of these courses is taken, the examination must be searching and have a pointed and unbiassed regard for the requirements of this country. The conception of the sort of scheme that will answer is easy enough, and I gladly leave it in the hands of the Inns of Court and the Honorable Judges of the High Court, contenting myself for the present with pointing out the evil.

As to linguistic education. Under this head too I shall be content with calling attention to the defect and leaving the mode of remedying it to the authorities concerned with the well-being of the Bar here and in England. I cannot however pass away from this branch of the subject without remarking that every civilian is placed under some sort of necessity to learn the Indian Vernaculars before he is entrusted with high administrative functions, and that a sense of justice requires that, whenever a person is not as completely fit for the business he undertakes as the character of such business fairly demands, he must be prepared to give up a part of his remuneration to any one that supplies the deficiency. This view of the matter would seem to suggest a ru e that before an English barrister or an

English attorney sets up independent practice, should get himself certified to possess something or a conversational acquaintance with the Vernaculars, and, as to Vernaculars documents, they should either be translated and certified as correct, by the practioners themselves if they are able to do so, or they must be rendered into English at *their* expense by *licensed translators,* a body that does not now exist, but which the High Court will do well forthwith to create for the benefit of the profession and the public *as well as to relieve their own establishments and the State from a work which such establishments ought not justly to perform and for which the State, and therefore the public at large, should not justfiably pay.* I earnestly recommend this point to the Honorable Judges and the Government, and I am not without hope that the better part of the profession will unselfishly see the justice of the step and co-operate with them in calling into being a body of this kind as a necessary complement of the existing methods of performing their duties, if they desire honesty to themselves and justice to their clients and the public at large.

Under the head of intellectual, I have little to add to what I have already said in considering the question of general education, and I beg to refer the reader to those remarks at pages 29 to 31.

As regards the *second parts* of the Lingual and of the Legal competency I have anticipated myself by the observations I made in respect of the benefits of industry and in respect of special education. I would therefore refer the reader to them at pages 14 to 16 and 31 to 35.

As regards the first parts of these elements viz. (1) a knowledge of the language of pleading and (2) a knowledge of the Rules of Practice, there is room for decided improvement. I regard apprenticeship as needed and intended for the acquisition of these species of knowledge, and it is notorious that the present mode of serving it is anything but satisfactory. Having reference to the observations that I was led to make to expose its futility in its present condition, the rules ought to be (1) that the Barrister, Vakil or Attorney who is to take apprentices must be at least five years in practice in Madras (2) that he should be one, of whom it can be honestly said that he is regularly practising on both sides of the High Court (3) that, as I maintain that these alone form the sum and substance of what is capable of being learnt by means of apprenticeship, a year's time is ample for a diligent or an intelligent person whether to become an attorney or a vakil (4) that by the end of such apprenticeship the apprentices must be examined under the superintendence of, and by the examiners appointed by, the "Council of Legal Education" to be formed as explained and set forth further on.

Unless rules to this effect are framed and strictly enforced, the apprenticeship will continue to be the farce that it has for a few years been as regards both Vakils and Attorneys, and there must be many in the profession who, without being intellectually or educationally backward, would still show to disadvantage, causing by these peccadilloes irreparable injury to the suitors, who resort to them being led away by the notion that every person enrolled by

the High Court must possess all the necessary q. lifications. I feel sure that the fate of this and othe. kindred evils is doomed, the moment the Judges of the High Court become pointedly alive to their existence and to their hurtfulness, and I feel equally sure that they will not allow their minds to be biassed by vague notions of racial differences and unreal traditions.

Passing on to moral fitness, I need hardly remind the reader that I have no accusation of a grave character to make against any of the branches of the Bar, and the only need that exists in my opinion is to contrive means to create, as far as practicable, the many guarantees that I enumerated at page 27 as operating to preserve one from degenerating and as keeping down the growth of inordinate selfishness and unprincipled (*i. e.* non-principled) conduct. The most effectual plan of creating these guarantees is to form, out of the whole profession, an Upper Branch, so organised that to belong to it may, as regards its members, afford to the public "a standing testimonial to their fitness in all respects for the work they undertake to do." Educationally-ascertained ability, and tried effeciency must be conditions of admission to this upper branch as a rule, and striking talents must alone form an exception. If a five years' *regular* practice in Madras is laid down as a qualifying circumstance, I think there will be a safe provision, as no one without a fair share of effeciency—whether it is the result of industry or intellectual power—can continue in practice for that period, especially when guaranteed excellence, as is proposed, must, of necessity, place

culating incompetence at a discount. Care must be taken that this body, emanating as it does from the very principle from which all trade-union combinations originate, may not, like these latter, degenerate into a close body, the notorious characteristics of which are self-isolation, a protectionist-opposition to outside competition and a subordination of the claims of others to its own interests. The best safeguard against such a tendency is that the Judges of the High Court, the Registrars and the District Judges of at least 7 years' standing as Judges should be *ex-officio* members of it. This body should be empowered (1) to conduct examinations of apprentices in rules of practice and in drawing up rational pleadings (2) to initiate, by way of proposals to the High Court, changes either in practice or scale of fees, whenever such changes are equitably necessary (3) to watch over the conduct of the members of the profession and when they find, on previous enquiry, that there is a well-grounded complaint to make, to submit such a complaint to the High Court, discharging functions somewhat similar to the duties of the Grand Jury in starting criminal prosecutions.

Thus far I have been considering the fitness of the legal practitioner *at the entrance into the profession*, and the question next arises :—What must be done to obviate the ill-consequences that must flow from a want of concrete experience? It will be readily seen that these ill-consequences are traceable, not only to the nervousness that generally proceeds from the novelty of the situation—but also to a non-acquaintance with the peculiarities that

characterise the men generally to be met with courts. This is one of those cases in which effic. ency and experience beget each other. It is a perfect *poser* to lay these interacting elements before the aspirant to forensic success and the way out of it that common sense and practice elsewhere suggest, is that the fresh members of the Bar should spend a time attending Courts for purposes of observation or in serving as juniors *not* having the independent charge of any case of any moment. In England, by a tacit consent on the part of the profession, this rule has long been establishing itself and kept out injury, as if such a rule expressly existed. Such an understanding is nowhere in this country, and it is an everyday occurrence, that the freshest barrister, attorney, or vakil is seen to have independent management of numbers of cases. This is a serious evil, and the poverty of the people forbids that there should be any rule that *a senior and a junior should be engaged* in the majority of cases. When candidly examined, such a rule has its root, rather in a desire to profit the professional, than in a wish to advance the interests of the particular suitor who supplies the funds. It is the plain case of robbing Peter to pay Paul—the Paul in the case being either the *junior* who is thus to be bribed into learning his work, or suitors other than the particular one who pays.

It is the fashion to lament over the absence of such a rule and where double briefs have been shown to entail on the suitor costs that weighed on him with a crushing force, the practice is defended on the ground that the Judges sometimes blamed attorneys for not having junior counsel. As regards

such a defence my answer is, as I gave it once before, that in cases in which such a course is calculated to tell injuriously on the client, it is the plain *duty* of the Attorney concerned to enter a respectful protest, and I feel sure that, on a proper representation and under proper conditions, ten to one, the Judges will open their eyes to the grave wrong that they unconsciously perpetrate. I cannot persuade myself to think that they will deliberately hold, if reduced to such a necessity, that, to meet the requirements of a sudden and unforeseen contingency, a suitor should be permanently overweighted. In other affairs of life, such an act would be an act of downright extravagance, and I do not see that litigation must be an exception. That courts exist for the convenience of suitors, and *not* suitors for the convenience of courts and the legal practitioners, is a truism, and I cannot bring myself to believe that the Judges would be slow to recognise, and act upon, this principle, if the suitors' grievance were properly submitted for their deliberate and earnest consideration.

These and other considerations that will readily occur, get rid of the idea and the wish that is father to such an idea, that *with the double agency existing as now*, it is desirable to impose on every fresh practitioner the duty of serving as a junior *as he does now.*

One other view that is taken as neutralising the effects of inexperience is that, whenever the double agency is resorted to, the attorney can be relied on to possess the necessary knowledge to select such counsel as are equal to the case or at any rate they

can be expected to coach up the novice. In the first place, numbers of the attorneys do not afford this safeguard by reason of their being themselves in blissful ignorance of the benefits of experience, and the absurdity of counting upon the inexperience of the attorney to supply the inexperience of counsel hardly requires an exposure. Add to this that, in numbers of cases, the attorney is conspicuous in court by his absence—a fact which every body knows and every body sees, and which either passes altogether unnoticed, or if noticed, gives rise to but a short-lived explosion. The suitor has undoubted claims on the court for a stricter enforcement of attendance on the part of the officers, whom it holds forth to the public as capable and worthy men, and the best way to recognise such claims is —not by an occasional—but by a sustained attention to them.

Let us assume that the attorney is as fit as we wish him to be and that he is bodily present in Court, yet the difficulty does not by any means vanish. It not unfrequently happens that the counsel, who has had the management of the case is either called away for shorter or longer periods of time or that, after conducting it for a day or two, he finds other more lucrative work and returns the brief to the attorney. In such emergencies the attorney cannot but be non-plussed, and the makeshift, resorted to in these circumstances, of handing over the brief to a new barrister, who has to pick up, as best he may, the thread that his predecessor had dropped rather abruptly, is not calculated to further justice

render an adequate return for the hard cash that the suitor had lavished in no stinting spirit. It would be hard lines if the attorney were asked to go on with the case in these circumstances, as it must be clear that he had not studied the case *with a view to conduct it.* Thus then this boasted system, which is alleged to be illustrative of the application of a division of labour is in reality an elemination of responsibility and an unequivocal sacrifice of the suitor and his interests. If these cases escape the animadversion that they richly merit, it is due to the fact that every body is irresponsible. The attorney can throw the blame on the barrister who in his turn can shift it on to the shoulders of the attorney, and the weight of responsibility oscillates for a time, and not finding where to rest, comes down with a crash on the devoted head of the faultless suitor. Thus then, look at the matter how you may, the existing pattern of double agency does not answer.

The true solution of the problem lies in forming two branches, one entitled to have an independent charge of a case, and the other, authorised to act as a junior. Where the case was simple, there would be but one that attended to it and as he both framed the suit and partially conducted it, he would find a proper substitute, with this inestimable advantage that he could advise the proxy, not only about the view on which the case had been launched, but also the line on which he had till then proceeded. If the case was a complicated one, then the junior that had been working with, and noting the management by, the senior would be able to go on till the senior returned or another took that place. If the attorney is made to qualify

as in my scheme above set forth, he will be co petent to be such a junior and the suitor will in no wise suffer. These considerations point to the necessity for a rule that, for two years from the date of enrolment, no barrister, vakil or attorney should have the independent charge of a case and that, during such time, he may be a junior acting under a senior's direction and guidance or he may be in attendance in Court, so that he may have opportunities of observing how cases are conducted and how business proceeds. This interval will further afford English Barristers and English Attorneys leisure to study the Indian Laws and local usages &c., while new vakils and indigenous attorneys will not be left without an alternative between having no work and taking up cases beyond the powers of a novice satisfactorily to manage. The advantages which will accrue to the suitor by the replacement I have proposed may be summarised to be (1) that the so-called double agency of the present day will cease to turn out to be in reality the *single agency* or tripple or even quadruple agency that, to the cost of the suitor, it too often proves at present, (2) that a higher and more effective form of double agency will take the place of the present delusive system, (3) that, except when the suitor, freely and by reason of the intricacies or heaviness of his case, chooses a junior to help his original legal adviser, such an expensive course will not be inflicted on him whether he likes it or no, (4) that in numbers of cases the injustice of requiring the litigant to call in the purely conduit-pipe services of an attorney *as an enabling step* to secure

services of counsel will be at an end, (5) that in cases which have been initiated by means of an attorney and in which at a later stage the suitor wishes to change his legal adviser, either from want of funds to pay heavily or other just cause, he will not be compelled to pay down a few hundreds to redeem a case in which the investigation-proper has yet to commence and (6) that where the pleadings have been drawn up by one who may have, in all probability, to conduct it to the final stage, he will feel his responsibility far more keenly and will draw up his pleadings far more cautiously and far more to the purpose than now.

This change will necessitate a change in the mode in which the legal practitioners are paid their fees. The correct data for the determination of the proper scale are not difficult to gather, and as a lengthened discussion on this head will be more or less a digression, the matter will be considered in full on another occasion. I may however state here that, as regards the Vakils, the present system requires to be modified by fixing a respectable minimum of fees, by his whole work being divided into a definite number of reasonable stages, and by an apportionment of the fees in respect of those stages.

The same system with similar modifications must be laid down for the other classes of practitioners, and, if the Bar is divided into an Upper and Lower Branch as advocated above, there arises the necessity for the Court to allow a second fee whenever more than one practitioner is engaged. To meet such cases a moderate additional percentage will quite answer. This, be it remembered,

will not prevent the legal practitioner—be h. barrister, a vakil or an attorney—from dictating, fo special reasons, his own terms, and, when put on *such* a footing, the rule limits itself to its legitimate province, and will not, like sumptuary laws of former ages, interdict a luxury that a part may, with his eyes wide open, indulge in, while it will leave to each legal practitioner the right to insist on his services being valued at a price of his naming. That the present state of things is inconsistent with these principles is decidedly the opinion, not only of myself but of many others who have dispassionately considered the matter. If these several changes were introduced, and if the High Court Bar is constituted on the principles and on the lines I have set forth, there is but one more change that is necessary to make the institution as faultless as any human institution can be. That change relates to the affiliation of the Mofussil Bar with the one in the High Court. This affiliation may be brought about in two ways. Wherever a graduate has practised in the superior courts in the Mofussil for a period of seven years, he must *ipso facto* be entitled to serve his one year's apprenticeship to learn High Court Pleadings and Rules of practice &c., and, after passing the usual examination held for the purpose, be enrolled as a High Court practitioner. If he is a graduate in law as well, the period of Mofussil practice may be reduced to three years and his service as a junior in Madras may also be reduced by one year. A High Court pleader, who has yet to go through his probation as a junior, may also avail himself of this latter rule and avoid

inconvenience of the unequal competition that may otherwise have to maintain with the members of the Upper Branch of the profession, if he resolves to behave as befits a member of an honorable body. I would extend to Judicial officers of talent and ascertained proficiency in general and special education the privelege of becoming members of the High Court Bar, subject however to passing the examination in pleadings and rules of practice. By these processes of affiliation and incorporation of experience, the High Court Bar will materially profit and there will be, among the body, a good percentage of men of wide experience in the different parts of the Presidency and of men who are not just at manhood. While the High Court Bar distinctly gains in this way in respect of age and experience, a new spirit will become felt in the Mofussil, and the opening for larger priveleges and higher status cannot but rouse the Mofussil pleader from the Slough of Despond in which he at present invariably and naturally lapses for want of any scope for higher aspirations.

Here I practically close, but to guard against the risk of being misunderstood by superficial readers who do not, either wantonly or from intellectual obliquity, distinguish a total denial of merit in a class, from generalised observations affecting the credit of such class or the system that underlies it, I must add that I am perfectly sensible that, among Barristers and Attorneys, there are specimens of marked ability, and I am sincerely glad to acknowledge the fact. Nevertheless this acknowledgment,

I think there is room to ask, whether these instan of capacity and talent exist *by reason* of the syste or *in spite* of its defective character. I am honestly of opinion that they are attracted to the profession by that law of demand and supply, which will draw to a lucrative vocation a certain proportion of talent and industry, while it also introduces to it members of the *Brummagem* sort. If, despite this fact, a reason is conceieved to exist for a system, it must be allowed that the principle of action should be dictated by the capabilities and possibilities that the system is calculated to produce—and not by rare exceptions that flourish independent of—I may say in spite of—all systems. When in 1854 a Commission was formed in England for a revision of the scheme of legal education then prevalent, it was not taken by any man of sense as implying that the authorities denied the merits of the Mansfields, the Eldons, the Broughams and the Erskines that had flourished under the scheme then in vogue. In criticising the existing systems I claim for myself no further excuse than the one that must be taken to have existed when the Commission above alluded to wrote :—

" The chief need for extended improvements in legal education has to do, not with the few men of uncommon ability and energy, who in almost any circumstances might accomplish much by self-education, but with the average class who take their standard of aim and efforts from their companions and from what is customarily expected."

My task, as originally sketched by me, would terminate here, if it did not happen that some men

ought to know better have, in a vague and random sort of way, objected to the aptness of an educational standard, glibly affirming that many a senior wrangler had proved a muff and many that had little academical education succeeded well enough in the business of life. When rigidly examined, this canting species of objection is tantamount to a denial of the efficacy of education itself, and it is with the feeling of telling a thrice-told tale that I extract the following passages from two great writers of the present century: —

"We are triumphantly told, that neither Clive nor Wellington could have passed the test which is prescribed for an aspirant to an engineer cadetship, As if, because Clive and Wellington did not do what was not required of them, they could not have done it if it had been required. If it be only meant to inform us that it is possible to be a great general without these things, so it is with many other things which are very useful to great generals."

"It is said, I know, that examinations in Latin, in Greek, and in mathematics, are no tests of what men will prove to be in life. I am perfectly aware that they are not infallible tests: but that they are tests I confidently maintain. * * * Indeed, this objection would prove far too much even for those who use it. It would prove that there is no use at all in education. * * * Whether the English system of education be good or bad is not now the question. Perhaps I may think that too much time is given to the ancient language and to the abstract sciences. But what then? Whatever be the languages,

whatever be the sciences, which it is, in age or country, the fashion to teach, the person who become the greatest proficients in those languages and those sciences will generally be the flower of the youth, the most acute, the most industrious, the most ambitious of honourable distinctions. If the Ptolemaic system were taught at Cambridge instead of the Newtonian, the senior wrangler would nevertheless be in general a superior man to the wooden spoon. If, instead of learning Greek, we learned the Cherokee, the man who understood the Cherokee best, who made the most correct and melodious Cherokee verses, who comprehended most accurately the effect of the Cherokee particles, would generally be a superior man to him who was destitute of these accomplishments. If astrology were taught at our Universities, the young man who cast nativities best would generally turn out a superior man. If alchymy were taught, the young man who showed most activity in the pursuit of the philosopher's stone would generally turn out a superior man."

It may then be asked whether the adoption of the educational basis, insisted on in these pages, will replace the present unsatisfactory system by another at once efficacious, unassailable and perfect. My answer again is that the objection originates from short sightedness and want of reflection and I cannot expose the fallacy better than by quoting from the pages of a great and lively writer, the passage following :—

"A physician does not say, "You will be well *as soon as* the bile is got rid of;" but he says, "You

will not be well *until after* the bile is got rid of." He knows, after the cause of the malady is removed, that morbid habits are to be changed, weakness to be supported, organs to be called back to their proper exercise, subordinate maladies to be watched, secondary and vicarious symptoms to be studied."

APPENDIX.

PLAINT.

(1) Samuel died at Tanjore on or about the 18th day of July intestate leaving him surviving the 1st Plaintiff and the 3rd Defendant his daughters and the 1st Defendant his son the second Defendant his widow and the 4th, 5th and 6th Defendants his grand-children by his daughter who predeceased him.

(2) That the said Samuel deceased also left property estate and effects of the value of Rupees——— ——or thereabouts (as in the schedule hereto annexed more particularly mentioned to be administered).

(3) That subsequent to the death of the said Samuel and that is to say in the month of August 1872 the 1st and 2nd Defendants applied to this Honorable Court for Letters of Administration to his said estate intentionally undervaluing the estate by alleging that the same was of the value of Rs. ——— or thereabouts.

(4) That the Plaintiff believes that the 1st and 2nd Defendants undervalued the estate as aforesaid with a view to laying personal claim to a considerable portion of the estate property.

(5) That the Plaintiff the 3rd Defendant and the 4th Defendant on behalf of her minor children aforesaid opposed the grant of administration to the said 1st and 2nd Defendants and contentious proceedings were begun in T. O. S. No.——of——on the file of this Honorable Court.

(6) That on the 9th day of September——a decree was passed in the said T. O. S. No.——of——directing letters of administration to issue to the said 1st and 2nd Defendants.

(7) That the 1st Defendant is at present a scholar at the Madras College and entirely unacquainted with business and unfit to administer to or manage as estate.

(8) That the 2nd Defendant is also unfit to manage an estate in consequence of illness and her ignorance of business.

(9) That the interests of the 1st and 2nd Defendants are opposed to that [illegible] the other members of the family and the said Samuel dec[illegible] [illegible]d the Plaintiff and 3rd, 4th, 5th and 6th

Defendants will be considerably prejudiced if the estate is allowed to be administered by the said 1st and 2nd Defendants.

(10) That the property estate and effects of the said Samuel deceased is subject to division under the provisions of the Indian Succession act.

(11) That the 4th, 5th and 6th Defendants claim to share in the estate of the said deceased through their mother, 2nd daughter of the said Samuel deceased who predeceased the said deceased.

Schedule referred to in the Plaint.

In the High Court of Judicature at Madras.

Civil Suit No. of 188—.

X.

Versus.

Y.

and

Z.

The above named Plaintiff states as follows :—

1*st.*—That on the——day of— ————187—the 1st Defendant Y, received and took possession of the property more particularly described in the schedule hereunder as No. 1, as Stridhana from her parents for her absolute use and control with liberty to sell dispose or otherwise alienate the same as and in whatever manner she may please and that the said 1st Defendant was in undisturbed possession and enjoyment of the same premises up to the month of—187—.

2*nd.*—That by a Mortgage Deed bearing date the 28th day of June 187—the premises particularly described in the said schedule hereunder written as No. 1 and situate at Perambore within the local limits of Madras and also within the Jurisdiction of this Honorable Court and the appurtenances belonging thereto together with another piece of land ituated in the village of—in the Sub-District of Sydapett he Zillah of Chingleput and bearing demarkation N particularly

lescribed in the schedule hereunder written as No. 2 were conveyed by the 1st Defendant to the Plaintiff for securing an advance of Rs.——together with interest payable thereon at the rate of 15 per cent. per annum subject to redemption of the same premises upon payment by the 1st Defendant of the said principal and interest at a day long since past.

3rd.—That on the 8th day of—187—the 1st Defendant with the consent and approbation of her husband as appears by his attestation to this document duly registered the said deed of mortgage in the Office of the Registrar of Assurances at Madras.

4th.—That since the execution of such Mortgage Document the 1st Defendant was in possession of and enjoyment of the said lands subject to her paying the usual Government kist due upon the said premises.

5th.—That the 1st Defendant in order to defraud the Plaintiff intentionally omitted to pay the kist due to the Government for the said land for Fusli 1290 although frequently called upon by the Government to do so nor did she inform the Plaintiff of such failure or demand.

6th.—That on the 22nd day of June 1882 the Government of Madras through the Deputy Collector of Madras attached the said Garden situated at————aforesaid and particularly described in the said schedule hereunder written as No. 1 and sold the same by public auction in satisfaction of the arrears of kist then due to Government, viz:—Rs.——and one Z, the 2nd Defendant herein who was the highest bidder was declared the purchaser thereof at or for the price or sum of Rs.

7th.—That Plaintiff only became acquainted of the attachment of the said property on the 22nd day of————the date of the said sale and immediately applied to the said Deputy Collector of Madras requesting him to postpone the said sale ting his claim to such property as Mortgagee a his ignorance of the non-payment of such kist notices as aforesaid and at the same time ten- Rs.————being the arrears of kist then due l the said sale but the Officer who was ir ned to accept his application or to rec

8th.—That on the 26th day of———the Plaintiff addressed a petition to the Deputy Collector of Madras requesting him again to cancel the sale and to accept the kist offered by him but no reply was received to such petition.

9th.—That on the 3rd day of————the Plaintiff again called upon the Collector of Madras through the Attorney Mr.————to postpone the grant of the sale certificate to the present purchaser as it was his intention to file a suit in this Honorable Court to set aside the said sale.

10th.—That there is now due from the 1st Defendant to the Plaintiff the sum of Rupees———for Principal and Interest upon the said Mortgage deed of the 28th day of

Plaintiff therefore prays.

(1) That the 1st Defendant may be ordered to pay the Plaintiff the said sum of Rupees———being the amount of principal and interest due upon the said Mortgage deed of the 28th day of———or in default thereof that the said premises may be sold and the proceeds applied in and towards the payment of the amount due and that if such proceeds shall not be sufficient for payment in full of such amount the 1st Defendant do pay to the Plaintiff the amount of the deficiency with interest thereon at the rate of 6 per cent. per annum until realization.

(2) That the purchase made by the 2nd Defendant herein may be declared null and avoid.

(3) That an injunction do issue from and under the seal of this Honorable Court restraining the Defendants from wasting, damaging, alienating or otherwise disposing of the property described in the said Schedule as Nos. 1 and 2 and now in their occupation and use. That Plaintiff may be allowed his costs of the suit and su… other relief as to this Honorable Court m… and the nature of the case may require.